IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. NO. 19639 OF 2005

Date of Decision: May 14, 2007

Mrs. Shakuntala Puri

…Petitioner

Versus

State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. H.S. Saini, Advocate,
for Mr. P.M. Kansal, Advocate,
for the petitioner.

Mr. M.P. Goswami, DAG, Punjab,
for respondent Nos. 1 and 2.

JUDGMENT

M. M. KUMAR, J.

The prayer made by the petitioner in the instant petition filed under Article 226 of the Constitution is for quashing letter No. 299, dated 12.7.2004 (P-4), sent by the Principal, Hindi Putri Pathshala Senior Secondary, Khanna-respondent No. 4, rejecting the claim of the petitioner for grant of pension on attaining the age of

superannuation. It has also been prayed that clause 6(6) of 'the Punjab Privately Managed Recognised Schools Retirement Benefits Scheme, 1992 (for brevity, 'the 1992 Scheme') be also declared ultra vires of the Constitution. A further direction has been sought to the respondents to count the service of the petitioner as qualifying service from the date of her initial appointment i.e. 16.10.1989 to 31.7.2000, which is more than 10 years, for fulfilling the requirement of clause 8 of the 1992 Scheme of completing 10 years of service.

Brief facts of the case are that the petitioner was selected and appointed as JBT teacher on 16.10.1989 in the pay scale of Rs. 480-880, which was revised to Rs. 1200-2100. Her appointment was on Government aided post. She remained on probation for a period of one year. After the appointment of the petitioner, her case was sent by her school to the Director, Public Instructions (Schools)-respondent No. 2 for approval, which was granted on 29.7.1991. She was conveyed the factum of approval by the District Education Officer stating that the approval to her appointment has been granted with effect from 16.10.1989 (P-2). She was also held entitled to the grade to Rs. 1200-2100 plus Dearness Allowance with effect from 16.10.1989 in accordance with the rules applicable from time to time. She retired from service on 31.10.2000. She applied for payment of her retiral benefits in terms of the 1992 Scheme. Eventually, she sent a legal notice on 29.6.2004, which was replied on 12.7.2004 (P-4). The case of the petitioner for payment of pension and other retiral benefits was rejected on the ground that she had not completed 10

years of service as her Provident Fund was deducted with effect from 1.8.1991. In other words, her service from 16.10.1989 to 1.8.1991, has not been considered as qualifying service within the meaning of clause 8 of the 1992 Scheme. She has been refused retiral benefits because she failed to fulfill the condition of service for a period of 10 years.

Mr. H.S. Saini, learned counsel for the petitioner has vehemently argued that the petitioner fulfills all the requirements of qualifying service as provided by clause 6(1), namely, that she joined the service after attaining the age of 18 years and took charge of the aided post on regular basis. He has also invited our attention to Clause 8 of the 1992 Scheme, which provide that an employee is entitled for pension under the 1992 Scheme only after he/she completes 10 years of qualifying service. According to the learned counsel, the petitioner had joined service on 16.10.1989 and retired on attaining the age of superannuation on 31.10.2000 and, therefore, she has completed more than 11 years of regular service. He has maintained that merely because approval to the case of the petitioner was accorded by the District Education Officer on 29.7.1991 and consequently the Contributory Provident Fund was deducted from that day, would not result into confiscation of her service of about 1 year and 9 months, especially when the scheme from under Rule 22A of the Punjab Privately Managed Recognised Schools Employees (Security of Service), Rules, 1981 (for brevity, 'the 1981 Rules'), specifically provides that the scheme is to apply to all those who have

been working on aided post on or after 5.2.1987.

Mr. H.S. Saini, learned counsel for the petitioner has also questioned the validity of clause 6(6) of the 1992 Scheme, which provides that qualifying service is to be taken into account with effect from an employee started contributing towards the Contributory Provident Fund. According to the learned counsel, such a provision is fortuitous in the cases like the present one because the approval to the case of the petitioner for appointment to an aided post was accorded by the Government at its own sweet will after a period of one year and 9 months although the same was with effect from 16.10.1989. Learned counsel has maintained that non deduction of Contributory Provident Fund with effect from 16.10.1989, once her appointment was approved retrospectively, cannot be imputed to the petitioner to her prejudice and the clause deserve to be declared ultra vires of Rule 22A of the 1981 Rules. Learned counsel has argued that sub-clause (6) of clause 6 of the 1992 Scheme is also against clause 6 (1) and 8 of the 1992 Scheme. In that regard he has placed reliance on a Single Bench judgment of the Rajasthan High Court in the case of **Rajendra Nath Sharma v. State of Rajasthan, 2005(3) Administrative Total Judgments 69**.

Mr. M.P. Goswami, learned State counsel has, however, submitted that the petitioner cannot be granted the benefit of pension as she cannot claim to have rendered 10 years continuous service, which is to be counted continuous regular service against an aided post, which is to be counted from the date an employee starts

contributing towards Contributory Provident Fund, as per clause 6(6) of the 1992 Scheme. He has further emphasised that there is basic rationale for correlating the counting of qualifying service from the date of making contribution to the Contributory Provident Fund and, therefore, the petitioner having not fulfilled the requirement of 10 years qualifying service within the meaning of clause 6(6) read with clause 8 of the 1992 Scheme, would not be entitled to claim pension and the writ petition is liable to be dismissed.

After perusing the record and hearing the learned counsel for the respondents, we are of the considered view that this petition deserve to be allowed. It is undisputed that the petitioner had joined service on an aided post on 16.10.1989 and have rendered continuous regular service till the date of her superannuation on 31.10.2000. It is also undisputed that her appointment was approved by the Government on 29.7.1991 with effect from 16.10.1989. It was for the respondents to deduct the Contributory Provident Fund from the date of her appointment as approved by the Government. The failure to deduct the Contributory Provident Fund with effect from the date her appointment was approved cannot be imputed to the petitioner to her detriment. Moreover, the 1992 Scheme was not in operation in the year 1989 when the petitioner was appointed and no one appears to have given a serious consideration to this aspect that once the petitioner does not contribute from the date of her appointment then she would not be eligible to claim pension as she might have rendered less than 10 years of service. The Scheme was finalized in the year

1992 although the same has been made applicable w.e.f. 5.2.1987.

There is another aspect of the matter. Hon'ble the Supreme Court in the case of **Vasant Gangaramsa Chandan v. State of Maharashtra, JT 1996 (Supp.) SC 544**, has considered clause 23 of Chapter VI of a Pension Scheme of the Hyderabad Agricultural Committee, which is as under:-

> "4. Clause 23 of Chapter VI in the scheme reads as under:
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> > "Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the P.F. contribution for the employee which ever later."

It was held that the provision has to be read that the clauses of the Scheme have to be read by keeping in view the fact that pension is not a bounty of the State and it is earned by employees after rendering long service to fall back upon after their retirement. The same cannot be arbitrarily denied. The clause was accordingly read down to mean that the qualifying service would commence either from the date of taking charge of the post to which the employee was first appointed or from the date he started contributing the Provident Fund contribution whichever was earlier. The ratio of the above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992

Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment, which is 16.10.1989 in the present case, or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioner would be entitled to counting of her service with effect from the date of her appointment and approval i.e. 16.10.1989.

In view of the above, the action of the respondents in refusing to grant pension to the petitioner is declared as illegal. The petitioner is entitled to count her entire service with effect from 16.10.1989 to 31.10.2000 as qualifying service for the purposes of pension. However, her contribution to the Contributory Provident Fund with effect from 16.10.1989 to 29.7.1991 be adjusted and deducted from the arrears of her pension. The respondents are, therefore, directed to calculate the pension of the petitioner and fix the same within a period of two months from the date a certified copy of this order is received by them. The arrears after calculation in the aforementioned manner be also paid within the stipulated period along with other retiral benefits.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 14, 2007
Pkapoor